

No. 3873

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

LAM FOOK YOU,

Appellant,

vs.

EDWARD WHITE, as Commissioner of
Immigration at the Port of San Francisco,

Appellee.

BRIEF FOR APPELLEE

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STATEMENT OF FACTS.

Lam Fook You, appellant herein, arrived at the port of San Francisco on the S. S. Nanking, November 27, 1920 (Ex. A, p. 46) and made application to enter the United States as a citizen thereof, claiming to be the foreign-born son of Lem Kim Fon, a United States citizen.

His application was denied by a Board of Special Inquiry (Ex. A, p. 28) and an appeal was taken to the Secretary of Labor, Washington, D. C. (Ex. A, p. 44) who affirmed the decision of said Board (Ex. A, p. 54).

Thereafter, to-wit, May 21, 1921, a petition for writ of habeas corpus (Tr. 2) and an order to show cause (Tr. 8) were filed in the District Court.

Thereafter, to-wit, July 2, 1921, a demurrer ^{to} of the said petition was filed (Tr. 9) together with respondent's exhibits, "A, B, C, D, E, F, G, and H," and the matter argued and submitted.

Thereafter, to-wit, March 6, 1922, the demurrer was sustained and the petition denied (Tr. 10).

It is from the order and judgment of the District Court sustaining the demurrer and denying the petition that this appeal is taken.

ARGUMENT.

The petition alleges, and it is assigned as error, that the immigration officials denied the detained the fair hearing and consideration in the case to which he was entitled under the law.

Does not the record show that the hearing or hearings were manifestly unfair?

In support of appellant's right to admission, there was filed the affidavit of the alleged father bearing his photograph and that of the applicant (Ex. A, p. 1), also the affidavit of an identifying witness, Lim Fook Loy (Ex. A, p. 3).

Thereafter, to-wit, January 12, 1921, the alleged father (Ex. A, p. 14), the witness, Lam Fook Loy (Ex. A, p. 11), and the applicant, Lam Fook You

(Ex. A, p. 9) testified before the Board of Special Inquiry, their testimony being made a part of the immigration record herein.

The Board of Special Inquiry not being satisfied that the applicant was entitled to admission, voted that the "case be deferred and ten days allowed for the production of additional evidence" (Ex. A, p. 5), and the attorney of record was so advised in writing (Ex. A, p. 17).

Thereafter, to-wit, January 17, 1921 (Ex. A, p. 22), an additional affidavit of the alleged father (Ex. A, p. 20) and the affidavit of an additional witness, Lim Sing, were filed (Ex. A, p. 18).

Thereafter, to-wit, February 2, 1921, the alleged father (Ex. A, p. 32), and witness, Lim Sing (Ex. A, p. 30), testified before the Board of Special Inquiry and their testimony made a part of the record herein.

Lam Fook You, was denied admission by the Board of Special Inquiry (Ex. A, p. 28), and the Consul General for China (Ex. A, p. 33) and the attorney of record (Ex. A, p. 34) were advised of said denial, in writing.

From the excluding decision of said Board an appeal was taken to the Secretary of Labor, Washington, D. C. (Ex. A, p. 44), and the attorney of record was permitted to review the record and exhibits in the case as appears from his receipt therefor (Ex. A, p. 45).

Appellant was also represented by Attorneys Bouve and Parker, of Washington, D. C., before the Department of Labor (Ex. A, p. 48), who submitted the case on the record without brief or oral hearing (Ex. A, p. 52).

Thereafter, to-wit, April 27, 1921, the Assistant Secretary of Labor affirmed the excluding decision of the Board of Special Inquiry (Ex. A, pp. 53-56).

We have gone through the record several times very carefully and failed to discover a single instance where the appellant was denied any right or privilege to which he was entitled.

On the contrary it appears that he was accorded a full, fair and impartial hearing; that every jurisdictional step necessary to a fair hearing was taken; that applicant was permitted to and did present each and every witness he or his counsel desired to present and that all witnesses so presented were fully and fairly heard.

Counsel for petitioner failed to point out any unfairness in the record on the hearing in the Court below and he has also failed to point out any such unfairness in his brief before this Court.

Unless it appears from the record that the proceedings were *manifestly unfair*, or that the actions of the executive officers were such as to prevent a fair investigation, or that there has been a *manifest abuse* of the discretion committed to them by the

statute, the order of the executive officers within the authority of the statute is final.

Low Wah Suey v. Bacus, 225 U. S. 460-468.

ABUSE OF DISCRETION.

Does the record disclose a manifest abuse of discretion?

It appears from the record that the denial of the Board of Special Inquiry was based on the fact that in their opinion and judgment the applicant had failed to establish his right to enter the United States as the son of Lam Kin Fon.

This conclusion was based ~~upon~~ ^{upon} discrepancies and contradictions in the testimony of the various witnesses concerning matters in relation to which the testimony of the witnesses should agree, if the relationship claimed actually exists.

There are numerous discrepancies and contradictions appearing in the record of the testimony in this and other hearings which effect the credibility of the witnesses and may well have caused the Board and the Secretary of Labor to doubt their truthfulness.

As an aid to the Court, the more important of these discrepancies are pointed out.

DISCREPANCIES.

First—As to the time of the death of applicant's mother and whether or not her feet were bound or natural.

Lam Kin Tun, alleged father, testifies:

Q. How many times have you been married?

A. Twice.

Q. What is the name, age, kind of feet and whereabouts of your first wife?

A. Luey Shee, she died C. R. 7, first part of the 4th month (May, 1918) in my home in Kew Lee Village, Sun Ning District, China.

Q. How old was she at the time of her death?

A. Forty-one years old, *and had bound feet.* (Ex. A, p. 14).

(It appears from Exhibit B, p. 36, that the father went to China March 5, 1918, and returned to the United States September 10, 1919 (Ex. B, p. 37), and was therefore in China at the time of his wife's death.)

Lam Fook You testifies:

Q. What is your mother's name, age, kind of feet and whereabouts?

A. Luey Shee, she died 4 or 5 years ago in the Kew Lee Village.

Q. *Where was your father when she died?*

A. *He was in the United States.*

Q. Are you sure your father was in the United States when your mother died?

A. Yes.

Q. *What kind of feet did your mother have?*

A. *Natural feet.*

Q. *Were they ever bound?*

A. *No* (Ex. A, p. 8).

Here the applicant testifies that his father was in the United States at the time of his mother's death, while the record shows the father to have been in China.

The applicant testifies that his mother had *natural feet* and that they never were bound, while the alleged father testifies that she had *bound feet*.

Second—As to whether it is the second or third son which died and whereabouts of the other sons.

Lam Kin Tun testifies:

Q. How many children did you have by your first wife?

A. Five boys, no girls.

Q. Give their names, ages and whereabouts.

A. Lam Gim, about 26 years old, he is in *Singapore*; Lam Chee, 24 or 25, also in *Singapore*; Lam You, 23 years old, now, he died in S. T. 2, in my home village in *China*; Lam Fong, 22 years old, in *China*, and Lam Fook You 8 years old, applicant for admission.

Q. Are you sure that your third son, Lam You, is dead?

A. Yes (Ex. A, p. 13).

In 1919 he testified that Lam Chee was dead (Ex. H, p. 22).

Lam Fook You testifies:

Q. How many brothers and sisters have you?

A. Four brothers, no sisters.

Q. Give their names, ages and whereabouts.

A. Lam Gim, 25 years old, in the *United States*.

Q. Are you sure he is in the *United States*?

A. Yes.

Q. Next brother.

A. Lam You, 24 or 25, also in the *United States*; Lam Chee, 22 or 23 years old, he is dead; Lam Quon Fong, 21 or 22, he is farming at home.

Q. When did your brother, Lam Chee, die?

A. I don't know.

Q. Are you sure your brother, Lam Chee, is dead?

A. Yes (Ex. A, p. 8).

Here the alleged father testifies that his third son Lam You is dead, while the applicant testifies that it is the second son, Lam Chee, who is dead. The father also testifies that two of his sons are in

Singapore, while the applicant testifies that they are in the United States.

Third—As to where the paternal grandparents are buried,

The alleged father testifies:

Q. Where are your parents buried?

A. In the hill *back of my village*, the Long Chon Hill (Ex. A, p. 13).

Lam Fook You testifies:

Q. Do you know where your father's parents are buried?

A. In the Long Hill *in front of the village*.

Q. Has that hill any other name?

A. No.

Q. *Are you sure it is in front of the village?*

A. Yes (Ex. 8, p. 8).

Fourth—As to where the applicant and the identifying witness, Lam Fook Loy, met in China:

The witness Lam Fook Loy testifies:

Q. *Where did you meet the applicant to bring him to the United States?*

A. *At the railroad station in See Gew market.*

Q. Who came with the applicant to this station?

A. Quong Fong, his brother.

Q. Name all the persons who accompanied you and the applicant from See Gew market to Hong Kong.

Lam Fook You testifies:

Q. Who brought you to the United States?

A. Lam Fook Loy.

Q. *Where did you meet him?*

A. *My brother took me to Hong Kong and I met him at the Quon Loy Yuen store in Hong Kong.*

Q. Did Lam Fook You travel any part of the journey with you to Hong Kong from your home village?

A. Quon Fong and Fook You and my son Lim San, that is all. I want to explain that when Quon Fong brought the papers to my house, Fook You did not come with him (Ex. A, p. 9).

A. *No, I met him in Hong Kong.*

Q. Did you and your brother Fong go to Hong Kong alone?

A. Yes.

Q. And you did not see Lam Fook Loy until you met him at the Quon Loy Yuen store in Hong Kong?

A. *No, I did not see him until I met him at that store* (Ex. A, p. 6).

We have pointed out these various discrepancies in the record hoping that by so doing it may aid the Court in its review of the record. There are other discrepancies in the testimony, but it does not seem necessary to dwell upon them here.

These discrepancies and contradictions are in respect to facts of time, place and relationship concerning which the witnesses cannot be presumed to be mistaken and which appear to have been deliberately, knowingly and falsely made with intent to deceive. No reasonable or satisfactory explanation has been offered, although ample opportunity was afforded each witness to make such explanation, as it appears from the record that each was asked at the close of his examination if he had any further statements to make, to which each replied in the negative.

Because of the contradictions and discrepancies appearing in the evidence as set out in the immigr-

tion records, the Board of Special Inquiry and the Secretary of Labor were called upon to exercise a discretion in the determination of the question then before them.

In the exercise of this discretion they could have decided the case either in favor of, or against the appellant, and, whichever way they decided, there being some evidence in support of that decision, their reasons for so doing would not be subject to judicial review by the courts. Otherwise, their authority over such matters would be nullified. It would be substituting the discretion of the court for that of the immigration authorities, whose finding, if within the statute, is final.

In the recent case of *Jeung Bock Hong and Jeung Bock Ning v. White*, 258 Fed. 23, the Court, speaking through his Honor, Judge Morrow, said:

“The discrepancies in the testimony appear to be unimportant, but if taking them altogether the executive officers of the Department found that the evidence in support of the petitioner’s right to land and enter the United States was so impaired as to render it unsatisfactory, the Court is not authorized to reverse that conclusion.”

“We cannot say that the proceedings were manifestly unfair or that the actions of the executive officers were such as to prevent a fair investigation or that there was a manifest abuse of the discretion committed to them by the statute. In such cases, the order of the execu-

tive officers within the authority of the statute is final."

The same Court, speaking through his Honor, Judge Morrow, in *White v. Gregory*, 213 Fed. 768-770, says:

"In reaching this conclusion the officers gave the aliens the hearing provided by the statute. This is as far as the Court can go in examining such proceedings. *It will not inquire into the sufficiency of probative facts, or consider the reasons for the conclusions reached by the officers.*"

Again, in *Lee Ah Yin v. U. S.*, 116 Fed. 614, 615, the Circuit Court of Appeals, speaking through his Honor, Judge Gilbert, held that

"There were inconsistencies in the evidence which may well have caused the commissioner and the Court to doubt its truth, and there were circumstances which tended to impeach the evidence of the plaintiff in error. We cannot say that the judgment was clearly against the weight of the evidence."

In *Low Wah Suey v. Backus*, 225 U. S. 460 (56 L. Ed. 1167), the Court, speaking through Mr. Justice Day, says:

"A series of decisions in this Court has settled that such hearings before executive officers may be made conclusively when fairly conducted. In order to successfully attack by judicial proceedings the conclusions and orders made

upon such hearings, it must be shown that the proceedings were *manifestly unfair*, that the *action of the executive officers was such as to prevent a fair investigation*, or that there was a *manifest abuse of the discretion committed to them by the statute*. In other cases the order of the executive officers within the authority of the statute is final. U. S. v. Ju Toy, 198 U. S. 253, 49 L. Ed. 1040, 25 Sup. Ct. Rep. 644; Chin Yow v. U. S. 208 U. S. 8, 52 L. Ed. 369, 28 Sup. Ct. Rep. 201; Tang Tum v. Edsell, 223 U. S. 673."

We confidently urge and believe that the action of the Secretary of Labor in denying appellant the right to enter the United States and ordering his deportation is justified by the facts disclosed in the record, and to hold that such order and finding was a manifest abuse of the discretion committed to the Secretary by the statute would be to substitute the discretion of the Court for that of the Acting Secretary.

Respectfully submitted,

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